

R4

Great Brit. - George II

12

354.d.10
125

[5]



26 Jan. II - 36

A N

A C T

F O R

Vesting the Parts or Shares late belonging to Benjamin Brain, Merchant, deceased, of and in One Twenty-fourth Part of the Eastern Division of the Province of New Jersey in America, in Trustees, to be sold for the Purposes therein mentioned.

INDEEAS Benjamin Brain, late of Tottenham High Cross, in the County of Middlesex, Merchant, deceased, made his last Will and Testament in Writing, bearing Date the Sixth Day of January One thousand Seven hundred and Forty-one, and thereby, amongst other things, gave and devised unto Daniel Weston and Catherine Dormer, therein named, and their Heirs, during the Life of his Grand-daughter Elizabeth Quare, late Wife of Daniel Quare, divers Messuages, Lands, Tenements, and Hereditaments, in the City of London, and in the Counties of Middlesex and Kent, therein mentioned and described, in Trust for the separate Use of the said Elizabeth Quare, during her Life, exclusive of her Husband; and after her Decease, he gave and devised the same, subject and charged as

A

is

is therein mentioned, unto his great Grandson *Benjamin Brain Quare*, for his Life ; Remainder to Trustees, and their Heirs, during his Life, in Trust to preserve the contingent Remainders ; Remainder to the First and every other Son of his Body, successively in Tail Male ; Remainder to the Daughter and Daughters of the said *Benjamin Brain Quare*, lawfully to be begotten, and the Heirs of their respective Bodies, as Tenants in common, and not as Joint-Tenants ; with Remainder to his own right Heirs : And he charged the said Messuages, Tenements, and Premises, with the Payment of Two thousand Pounds unto such Child and Children of the said *Daniel Quare*, as should thereafter be born on the Body of the said *Elizabeth* his Wife, to be paid at such time, and in such manner, as is therein mentioned : And he gave his Farm and Lands, called *Grayling*, in *Essex*, unto the said *Daniel Weston* and *Catherine Dormer*, and their Heirs, in Trust to be conveyed and disposed of, as the said *Elizabeth Quare*, should, by Writing under her Hand and Seal, notwithstanding her Coverture, direct or appoint : and for want of such Appointment, in Trust for her right Heirs : And he gave and devised to the said *Benjamin Brain Quare*, and his Heirs, all those his Two Third-Parts or Shares, being Freehold, of and in One Twenty-fourth Part of all that Province and Lands of *East New Jersey* in *America*, with the Timbers, Woods, and Under-woods, thereto belonging : And he gave Two several Annuities for Life, unto his Grand-daughter *Mary Hill*, and his Cousin *Mary Smith*, who are both since dead ; and charged all his said Freehold Messuages and Premises with the Payment thereof : And he gave all his Ships, and Parts of Ships, and all other his Personal Estate, unto the said *Daniel Weston* and *Catherine Dormer*, in Trust to sell and dispose thereof, and to put out the Money arising therefrom, on Security, at Interest ; and to pay the Interest for the separate Use of the said *Elizabeth Quare*, for her Life ; and after her Decease, as to both Principal and Interest, in Trust for all and every the Child and Children of the said *Elizabeth Quare* ; other than her eldest Son that should be living at her Death ; to be paid at their respective Ages of Twenty-one Years, Share and Share alike : And in case there should be no such Child or Children, then in Trust for such Person or Persons, as she, by Deed or Will, should direct or appoint : And for want of such Appointment, in Trust for her Executors or Administrators : And he made the said *Daniel Weston* and *Catherine Dormer* Executors of his said Will, and gave them Fifty Pounds apiece for their Trouble : And after taking Notice that his Grandson *Daniel Quare* was become a Bankrupt, he willed, that his Assignees, or any of his Creditors, should not have any Interest in, or Power over, any of his the said Testator's Estate and Effects, thereby given, devised, and bequeathed, as aforesaid ; **Yet nevertheless**, that, if all and every of the said Creditors, whose respective Debts exceeded Ten Pounds, should, within Twelve Months after his Decease, consent and agree to take and accept of Ten Shillings in the Pound for their respective Debts, provided the same did not exceed Two thousand Pounds, and the said Creditors and Assignees would consent to supersede the Commission of Bankrupt against the said *Daniel Quare*, and convey, release, surrender, assign, and deliver up, all the Freehold and Copyhold Estates, Debts, and Effects of the said *Daniel Quare*, which the said Assignees were possessed

possessed of, or intitled to, unto the said *Daniel Quare*, or as he should appoint: Then he gave Power and Authority to his said Trustees to raise and pay, out of his Personal and Real Estates, to the said Assignees, a Sum of Money not exceeding Two thousand Pounds, for the Use of the Creditors of the said *Daniel Quare*, upon the Terms aforesaid: And then, and in such case, he thereby revoked all the Gifts, Devises, and Bequests, thereby made of and concerning his Real and Personal Estates; except Two Legacies thereby given to his Two Trustees, and the said Two Annuities: And he willed that the Trust and Executorship vested in the said *Daniel Weston* and *Catherine Dormer*, should determine and be void: And then he gave and devised to his Grand-daughter *Elizabeth Quare* all his Freehold Messuages, Lands, Tenements, and Hereditaments, therein particularly mentioned, for her Life; with Power to charge the same with the Payment of any Sum of Money, not exceeding Two thousand Pounds, to her younger Children by the said *Daniel Quare*; Remainder to the said *Daniel Quare* for his Life, without Impeachment of Waste; Remainder to the said *Benjamin Brain Quare* for his Life; Remainder to Trustees, to preserve contingent Remainders; Remainder to the First and every other Son of the said *Benjamin Brain Quare*, successively, in Tail Male; Remainder to all and every the Daughter and Daughters of the said *Benjamin Brain Quare*, and the Heirs of their Bodies, as Tenants in common; with the Remainder to the right Heirs of the Testator: And he gave all the Residue and Remainder of his Personal Estate unto the said *Elizabeth Quare* his Grand-daughter, and made her sole Executrix of his Will:

And whereas the said *Daniel Weston* and *Catherine Dormer*, after the Death of the said Testator, raised the Sum of Two thousand Pounds, by Mortgage of divers Lands, Tenements, and Hereditaments, in the Counties of *Middlesex* and *Kent*, being Part of the Estate of the said Testator, devised by his Will to the said *Benjamin Brain Quare*, and his Children, and their Issue, as aforesaid; and the same was applied for the Payment and Satisfaction of the Debts of the said *Daniel Quare*, pursuant to, and according to, the Tenor of the said Will; and by an Act of the Prerogative Court of *Canterbury*, bearing Date the Sixteenth Day of *November* One thousand Seven hundred and Forty-four, after taking Notice of the said Will, and that *Daniel Weston* and *Catherine Dormer* had proved the same in the said Court; and that the Creditors of the said *Daniel Quare*, whose respective Debts exceeded Ten Pounds, and who had proved their Debts under the said Commission of Bankruptcy did consent and agree to accept Ten Shillings in the Pound, in full of their Debts, and that, upon Payment thereof, the said Commission should be superseded; and that the Assignees under the said Commission might convey, release, and deliver to the said *Daniel Quare*, all his Estates and Effects, pursuant to the said Will; and that the said *Daniel Weston* and *Catherine Dormer* having advanced and paid to the said Assignees Two thousand Pounds, in order to pay to the said Creditors of the said *Daniel Quare*, in full Satisfaction of their Debts which had been paid accordingly; and that the said Commission had thereupon been superseded; and that the said Assignees had, pursuant to an Order of the Lord High Chancellor for that Purpose, conveyed and assigned all the Manor, Lands,

Lands, Hereditaments, and Effects vested in them, under the said Commission, unto the said *Daniel Quare*; and that thereupon the Probate, granted to the said *Daniel Weston* and *Catherine Dormer*, was decreed to be ceased and expired, and was granted and committed to the said *Elizabeth Quare*; and also taking Notice, that the said *Elizabeth Quare* was dead, Administration of the Personal Estate and Effects of the said *Benjamin Brain*, left unadministred, as aforesaid, with his Will annexed, was granted unto the said *Daniel Quare*:

And whereas the said Two Third-Parts or Shares of the said One Twenty-fourth Part of the Province and Lands of *East New Jersey*, so devised by the said Will, do, by virtue of, and under the Devises and Limitations therein contained, belong, and are now come unto the said *Daniel Quare* for his Life; Remainder to the said *Benjamin Brain Quare* for his Life; with Remainders over, for the Benefit of his Sons and Daughters, respectively, and their Issue, as is therein mentioned; with Remainder or Reversion in Fee to the right Heirs of the Testator: And the said *Daniel Quare*, and *Benjamin Brain Quare*, in Right of their said Shares and Propriety, are, by the Laws and Customs of the said Province, intitled to have certain Quantities of Land surveyed, ascertained, and appropriated to them, out of the Lands remaining in common in the said Province, upon a Warrant to be obtained from the Council of Proprietors of *East New Jersey*, directed to the Surveyor-General of the said Province; But, as no such Warrant hath yet been sued out, or obtained, no certain or specifick Lands have been surveyed, ascertained, appropriated, granted, or appointed, to or for the said *Benjamin Brain* the Testator, or any Person claiming under him, so that the Shares and Propriety so belonging to the said *Daniel Quare* and *Benjamin Brain Quare*, have not yielded or produced, and, until the same are ascertained, taken up, and cultivated, are utterly incapable of producing, any Profit, Advantage, or Income:

And whereas the said *Daniel Quare* hath, at the Expence of Three hundred Pounds, or thereabouts, sent over an Agent into the said Province of *East New Jersey*, to inquire into the State, Circumstances, and Condition of the said Propriety and Premises, and finds, that the greatest Part of the improveable and manureable Land in the Province is already taken up, appropriated, and granted; and that the Remainder thereof is of a worse Quality, and inferior Value; and that the suing out such Warrant, and the surveying and ascertaining Lands for the said *Daniel Quare* and *Benjamin Brain Quare*, in Right of, or in respect of, their Propriety, will be attended with a further great Expence, and that the obtaining a Grant and Conveyance of such Lands would be of little or no Benefit to the Owner thereof, unless such Owner, for the Time being, was to live and reside in that Country:

And whereas the said *Daniel Quare* and *Benjamin Brain Quare* have now a fair Opportunity to sell and dispose of the Inheritance of their said Shares and Propriety in the Premises, and do propose and desire, that the Money arising and produced by such Sale may be applied, first, for the paying

† And the surplus thereof (if any) [to be] laid out in the purchase of lands & hereditaments to be settled in manner herein after mentioned

paying and defraying the Charges and Expences of the obtaining and passing this Act; and, in the next place, for the paying and reimbursing the Charges and Expences which the said *Daniel Quare* hath sustained and been put unto, in sending an Agent to *New Jersey*, as aforesaid; and afterwards, for and towards discharging the said Sum of Two thousand Pounds, so advanced and paid to his Creditors, in Satisfaction of their Debts, as aforesaid. **But**, by reason of the Limitations contained in the said Will, such Sale cannot be effected for the Purposes aforesaid, without the Aid of an Act of Parliament;

Wherefore Your MAJESTY's most Dutiful and Loyal Subjects, the said *Daniel Quare* and *Benjamin Brain Quare*,

Do most humbly beseech Your MAJESTY,

That it may be Enacted; And be it Enacted, by the KING's Most Excellent MAJESTY, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all those the said Two Third-Parts or Shares of and in One Twenty-fourth Part of all that Province of *East New Jersey* in *America*, now called and known by the Name of the Eastern Division of the Province of *New Jersey*, late the Estate and Propriety of him the said *Benjamin Brain* the Testator; and all and every the Lands and Grounds to be set out, ascertained, appropriated, and granted, in respect of the same; and all and every the Parts, Shares, Proprieties, Estate, Lands, Tenements, and Hereditaments whatsoever, situate, lying and being, or to be had, received and taken, in the said Eastern Division of the said Province of *New Jersey* aforesaid, which he the said *Benjamin Brain* was seized or possessed of, or intitled to, at the time of his Death, and were given and devised by his Will, as aforesaid; and all Timber, Woods, Under-woods, Rights, Privileges, Commodities, and Appurtenances, thereto incident, belonging, or appertaining; and the Reversion and Reversions, Remainder and Remainders, Rents, Issues, and Profits of the same Premises, shall, from and after the First Day of *April* One thousand Seven hundred and Fifty-three, be settled upon, and vested in, and the same are hereby, from thenceforth, settled upon, and vested in, *Thomas Tutchet*, of *Rotherbith* in the County of *Surry*, Distiller, and *George Morecock*, of *Rotherbith* aforesaid, Merchant, their Heirs and Assigns, To the Use of them the said *Thomas Tutchet* and *George Morecock*, their Heirs and Assigns for ever, freed and discharged, and absolutely acquitted, exonerated, and indemnified, of, from, and against all the Uses, Trusts, Powers, Provisoos, and Limitations, limited, created, provided, and declared, of and concerning the same, in and by the Will of the said *Benjamin Brain* the Testator; but, nevertheless, Upon the Trusts, and to and for the Ends, Intents, and Purposes, herein after-mentioned, expressed, and declared; that is to say, upon Trust, that they the said *Thomas Tutchet* and *George Morecock*, and the Survivor of them, and the Heirs of such

B

Survivor,

Survivor, shall and do, with all convenient Speed, sell and dispose of all and every the said Parts, Shares, Proprieties, Lands, Hereditaments, and Premises, hereby vested in them, as aforesaid, unto any Person or Persons, that shall be willing to become Purchaser or Purchasers thereof, for the most Money, and best Price and Prices, that can be reasonably got for the same; and shall and do apply and dispose of the Money arising by such Sale in manner following; that is to say, In the first place, for the paying and defraying the Charges and Expences incident to and attending the obtaining and passing this present Act; and, in the next place, for the paying and reimbursing to the said *Daniel Quare*, any Sum not exceeding in the Whole the Sum of Three hundred Pounds, for the Charges and Expences which the said *Daniel Quare* hath sustained and been put unto, in sending such Agent into the Province of *East New Jersey*, as aforesaid; and ~~the Residue of the said Purchase-money~~ for and towards paying and discharging the said Sum of Two thousand Pounds, so raised by the said *Daniel Weston* and *Catherine Dormer*, and paid to the said Assignees, for the Benefit of the Creditors of the said *Daniel Quare*, as aforesaid, as far as the same will extend. Φ

And it is hereby further Enacted and Declared, That, in the mean time, and until such Sale or Sales shall be made, as aforesaid, the said *Thomas Tutcher* and *George Morecock*, and the Survivor of them, and the Heirs of such Survivor, shall and do permit and suffer the Rents, Profits, and Produce of the said Parts, Shares, Proprieties, and Premises, hereby vested in them, as aforesaid, to be received and taken by such Person or Persons, as would be intitled to, and ought to receive the same, in case this Act had not been made.

And, for promoting and facilitating the Sale of the said Parts, Shares, Proprieties, and Premises, hereby vested to be sold as aforesaid; **It is hereby Enacted and Declared**, That the Receipt or Receipts of the said *Thomas Tutcher* and *George Morecock*, or the Survivor of them, or the Heirs of such Survivor, under their, his, or her Hands or Hand respectively, shall be a sufficient Discharge to the Purchaser or Purchasers of the Premises, or any Part thereof, and to their respective Heirs, Executors, Administrators, and Assigns, for so much of the said Purchase-money, for which such Receipt or Receipts shall be given: And after such Receipt or Receipts, the said Purchaser or Purchasers, his, her, and their Heirs, Executors, Administrators, and Assigns, shall be, and is and are hereby absolutely acquitted and discharged of and from the same: And he, they, or any of them, after such Receipt or Receipts, shall not be answerable or accountable for any Loss, Misapplication, or Non-application of the said Purchase-money, or any Part thereof.

And it is hereby further Enacted and Declared, That the said *Thomas Tutcher* and *George Morecock* shall not, nor shall either of them, or the Heirs, Executors, or Administrators of either of them, be answerable or accountable for any Money, to be received by virtue of or under the Trusts hereby in them reposed; any otherwise than each Person, for such Sum and Sums of Money as he or they shall respectively actually receive;

receive; and that no one of them shall be answerable or accountable for the Acts, Receipts, Neglects, or Defaults of the other of them: And also that they the said Thomas Tutchet and George Morecock, their respective Executors, Administrators, and Assigns, shall and may, by and out of the Rents, Issues, and Profits of the Premises hereby vested in them, as aforesaid, or the Money arising by Sale thereof, retain to and reimburse themselves, all reasonable Costs, Charges, and Expences, that they respectively shall or may sustain or be put unto, in and about the Execution of the Trusts hereby in them reposed.

Saving always to the KING's Most Excellent MAJESTY, his Heirs and Successors, and all and every other Person and Persons, Bodies Politick and Corporate, his, her, and their respective Heirs, Successors, Executors, and Administrators (Other than and except the said Daniel Quare, and Benjamin Brain Quare, and the First and every other Son and Sons of the Body of the said Benjamin Brain Quare to be begotten; and the Heirs Male of the Body and Bodies of such First and other Son and Sons; and all and every the Daughter and Daughters of the Body of the said Benjamin Brain Quare to be begotten, and the Heirs of their respective Bodies; and the right Heirs of the said Testator Benjamin Brain;) All such Estate, Right, Title, Interest, Benefit, Property, Claim, and Demand whatsoever, of, in, to, or out of the Premises, hereby vested as aforesaid, every or any Part thereof, as they, every, or any of them had before the Passing this Act, or could or might have had and enjoyed, in case this Act had not been made.

And shall do apply & dispose of the residue & surplus of the money arising by such Sale in case there shall be any such surplus in the parish of Land known to & held to in that pt of Brit called England in fee simple in possession and shall do to the contrary & repurchase the lands known to & held to to be purchased to for as or subject to such & many of the uses Estates & limitations limited created and declared in & by the will of the said Ben. Brain of & in his freehold Lands known to & held to thereby devised as shall be then existing & undisturbed or capable of taking Effect And in the mean time until such purchase shall be made to place out such residue or surplus upon Gov. or real security at int & to pay the int & yearly produce thereof unto such person or persons as would be entitled to the rents & profits of the Lands & held to to be parish in case the same were purchased & sold pursuant to this Act

Trust hereby in them reposed. shall or may put in or be put into, in and about the Execution of the
 selves, all reasonable Costs, Charges, and Expenses, that they respectively
 did, or the Money arising by Sale thereof, retain to, and reimburse them-
 selves, Rates, Taxes, and Profits of the Premises hereby vested in them, as above
 cutors, Administrators, and Assigns, shall and may, by and out of the
 they the said Thomas Dutcher and George Maresca, their respective Exe-
 Agt, Receipts, Neglects, or Defaults of the other of them: And also that
 receive; and that no one of them shall be answerable or accountable for the

Having always to the KING's Most Excellent Majesty, his Heirs and Successors, and all and every other Person and Persons, Bodies Politick and Corporate, his her, and their respective Heirs, Successors, Executors, and Administrators (Other than and except the said David Gray, and Benjamin Brain Gray, and the first and every other son and sons of the Body of the said Benjamin Brain Gray to be begotten; and the Heirs Male of the Body and Bodies of each said and other son and sons; and all and every the Daughter and Daughters of the Body of the said Benjamin Brain Gray to be begotten, and the Heirs of their respective Bodies; and the right Heirs of the said Tobias Benjamin Brain) All such Estates, Right Title, Interests, Benefits, Property, Claims, and Demands, whatsoever, of in to, or out of the Premises, hereby vested as aforesaid, every or any Part thereof as they every, or any of them had before the Tearing this Act, or could or might have had and enjoyed, in case this Act had not been made.

AN
C
T
FOR

Veſting the Parts or Shares late belonging to Benjamin Brain, Merchant, deceased, of and in One Twenty-fourth Part of the Eaſtern Diſtriſion of the Province of New Jerſey in America, in Truſtees, to be ſold for the Purpoſes therein mentioned.